

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, amendments to 31 TAC §65.95, concerning Movement of Breeder Deer and §65.611 (relating to Prohibited Acts), in response to the ongoing and most recent detections of chronic wasting disease (CWD) in additional deer breeding facilities.

The department's executive director has determined that the nature of CWD, its continued spread, and its detection in additional deer breeding facilities in Brooks, Frio and Zavala counties pose an immediate danger to white-tailed deer, which is a species authorized to be regulated by the department, and that the adoption of rules on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>. Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape.

The emergency rules will initially be in effect for 120 days, but may be extended for an additional 60 days. It is the intent of the department to proceed to the publication of proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process during the period of effectiveness of this emergency action.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of

diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). To date there are no known cases where humans have been infected with CWD from consuming venison from infected deer. However, recent research suggests that CWD transmission from animals to humans through consumption of infected meat should not be ruled out. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

The department has received recent confirmation of CWD in deer breeding facilities in Brooks, Frio, and Zavala counties. Current rules provide that when CWD is detected in a breeding facility or at a location where breeder deer have been released, the facility and any directly connected facilities are immediately prohibited from receiving or transferring deer and the department and Texas Animal Health Commission (TAHC) staff immediately begin epidemiological investigations to determine the extent and significance of possible disease transmission.

In the case of the Brooks County breeding facility, department records indicate that the facility has within the last five years transferred 1,057 deer to 51 deer breeding facilities, five Deer Management Permit (DMP) sites, and 77 release sites located in a total of 67 counties, as well as to three destinations in Mexico. In the case of the Frio County breeding facility, department records indicate that the facility has "certified herd" status under the TAHC herd certification program and within the last five years has transferred 627 deer to 46 deer breeding facilities, two nursing facilities, two DMP sites, and 29 release sites located in a total of 41 counties. In the case of the Zavala County breeding facility, department records indicate that within the last five years the facility has transferred 276 deer to three deer breeding facilities, one DMP facility, and 21 release sites located in a total of 14 counties. The breeding facilities, nursing facilities, DMP facilities, and release sites that have received deer from the positive facilities are directly connected to those facilities and are of epidemiological concern. These facilities are by current rule also prohibited from receiving or transferring deer unless and until epidemiological investigation determines that Movement Qualified (MQ) status can be restored. An additional 265 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

The recent detections of CWD in breeding facilities located in Brooks, Frio, and Zavala counties are part of an ongoing outbreak of CWD in deer breeding facilities. Since March 29, 2021, CWD has been detected in 14 counties. In 2023 alone, CWD has been detected in nine deer breeding facilities located in seven counties. Prior to 2021, CWD was detected in six deer breeding facilities located in four counties.

In response to the magnitude and the potential severity of this situation, the emergency rules require the ante-mortem testing of test eligible deer prior to transfer from a breeding facility to another breeding facility.

In addition, the rules will prohibit the removal of identification tags on breeder deer except as specifically authorized by statute. Parks and Wildlife Code, §43.3561 stipulates that not later than March 31 of the year following the year in which a breeder deer is born, the breeder deer must be identified by placing a tag in one ear. Section 43.3561 also requires deer breeders to immediately replace an identification tag that has been dislodged, damaged, or removed by means other than human agency and allows the removal of a tag only for the purpose of immediately replacing the tag with a tag that meets the requirements of Parks and Wildlife Code, §43.3561.

The department is authorized by Parks and Wildlife Code, §43.357 to make rules governing the possession of breeder deer held under Parks and Wildlife Code, Chapter 43, Subchapter L, and has determined that in order to expedite and facilitate epidemiological investigations, it is necessary to prohibit the removal of identification tags under any circumstance other than allowed by statute. The ability to quickly locate and test breeder deer transferred to a release facility is critical to determining the likelihood of disease transmission. The department and TAHC will continue to conduct epidemiological investigations and the department will undertake rulemaking through the normal administrative process.

The department will undertake to inform the public with respect to the emergency rules and permanent rules to follow.

The emergency action is necessary to protect the state's white-tailed deer populations, as well as associated industries.

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §65.95

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, Parks and Wildlife Code, Subchapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession of breeder deer, reporting requirements, and procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.95. Movement of Breeder Deer:

(a) General. Except as otherwise provided in this division, a breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department to:

(1) another breeding facility as provided in subsection (b) of this section;

(2) an approved release site as provided in subsection (c) [(b)] of this section;

(3) - (4) (No change.)

(b) Transfer From Breeding Facility to Breeding Facility. A breeder deer may be transferred from one breeding facility to another breeding facility only if:

(1) an ante-mortem test on rectal or tonsil tissue collected from the deer within the eight months immediately preceding the transfer has been returned with test results of "not detected"; and

(2) the deer is at least six months of age at the time the test sample required by this subsection is collected.

(3) An ante-mortem test result of "not detected" submitted to satisfy the requirements of §65.92(d) of this title (relating to CWD Testing) may be utilized a second time to satisfy the requirements of this subsection, provided the test sample was collected as provided in paragraph (1) of this subsection.

(4) A facility from which deer are transferred in violation of this subsection is automatically NMQ and any further transfers are prohibited until the permittee and the owner of the destination facility have complied with the testing requirements of the department, based on an epidemiological assessment as specified in writing.

(c) [(b)] Release Sites; Release of Breeder Deer.

(1) - (6) (No change.)

(d) [(e)] Trace-out Release Site.

(1) - (3) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2023.

TRD-202302627

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Effective date: July 24, 2023

Expiration date: November 20, 2023

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SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §65.611

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, Parks and Wildlife Code, Subchapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession of breeder deer, reporting requirements, and procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.611. Prohibited Acts.

(a) - (l) (No change.)

(m) Except as provided by subsection (n) of this section, it is an offense for any person at any time for any reason to remove an identification tag prescribed by Parks and Wildlife Code, §43.3561, from a breeder deer except to immediately replace it with an identification tag meeting the requirements of Parks and Wildlife Code, §43.3561(c) or (h).

(n) A breeder deer that has been released is no longer a breeder deer; however, it is an offense for any person to remove the identification tag required by Parks and Wildlife Code, §43.3561, from such deer except as a consequence of reducing the deer to possession following lawful take under a hunting license.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2023.

TRD-202302628

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Effective date: July 24, 2023

Expiration date: November 20, 2023

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